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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Writ Petition No.972 of 2004

Date of Decision: October 04, 2007

Harbhajan Kaur

...Petitioner

VERSUS

Baldev Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.H.S.Bajwa, Advocate,
for the petitioner.

Mr.P.K.Gupta, Advocate,
for respondents No.1 and 2.

Mr.M.C.Berry, Sr.DAG, Punjab,
for the State.

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RANJIT SINGH, J.

Harbhajan Kaur, mother of fourteen years old girl named Lachhmi, filed this petition in the year 2004 for issuing of a writ of

Habeas Corpus alleging that her daughter was illegally detained by respondents No.1 and 2, who were then working as SHO and SI at Police Station `B' Division, Amritsar. Prayer for detailing a Warrant Officer was also made. This court noticing the averments made in the petition, issued notice of motion to the Advocate General, Punjab and detailed a Warrant Officer to search for Lachhmi stated to be illegally detailed at Police Station `B' Division, Amritsar or any other place, which may be pointed out by the petitioner. Warrant Officer was also directed to submit his report on or before the adjourned date.

Pursuant to the directions of this court, the Warrant Officer proceeded to conduct the search on 15.9.2004. The Warrant Officer reached Police Station `B' Division Amritsar at 10.20 P.M. on the same day. He searched for the detenue in the police station. Baldev Singh, brother of the detenue, was found present in the police station being on police remand alongwith Mani, Devinder and Subhash. On search, the Warrant Officer could not find the detenue in the police station. The petitioner was asked to call the name of the detenue loudly, whereupon the Warrant Officer and others heard some noise from the back portion of the police station, which was stated to be the office of CIA Staff, Majitha. The Warrant Officer could not, however, find a way to enter this rear portion of the police station. Respondents No.1 and 2, namely, Baldev Singh SHO and Kashmira Singh SI also reached the police station in the meantime and stated before the Warrant Officer that the detenue was never brought to the police station. Warrant Officer served the said police officers notice about the present petition. The Warrant Officer proceeded towards the location of CIA Staff from the road side,

which was located in the back portion of the same building on the first floor. On the asking of Warrant Officer, Sentry opened the door. The search there also did not yield any result or the presence of detenue. During this time, only the petitioner went to the ground floor and there detenue Lachhmi alongwith one Lady Constable Amarjit Kaur and a car driver were found standing outside the door. Detenue Lachhmi disclosed before the Warrant Officer that she had been taken out from the premises of first floor by Lady Constable Amarjit Kaur on the excuse of taking her to bath-room. As soon as she disclosed this fact, the police officials, present there, slipped from the scene one by one. MHC was also not present there and the Roznamcha register was also not made available to the Warrant Officer. In this background, the Warrant Officer left the police station with detenue Lachhmi and after leaving her at her residence, he returned to Chandigarh. He submitted his report before this court on 22.9.2004.

The case was adjourned from time to time and on 22.7.2005, this court observed that from the report of the Warrant Officer, it cannot be clearly discerned if the detenue was found in illegal custody of respondents No.1 and 2 in the premises of CIA Staff, Majitha. It was also noticed that no satisfactory explanation was forthcoming from the respondents-police officials about the purpose for which the detenue, Lachhmi, was found present with Lady Constable Amarjit Kaur. This court accordingly directed the Chief Judicial Magistrate, Amritsar to conduct a fact finding enquiry after affording opportunity to lead evidence to both the parties. Chief Judicial Magistrate, Amritsar was directed to submit his report within

a period of three months. Chief Judicial Magistrate, however, could not conclude the enquiry within the stipulated period and sought extension of time to do the needful. On 26.10.2006, it was noticed by the court that Chief Judicial Magistrate had not cared to intimate the latest portion of the case in regard to the enquiry to be held by him. Registry was directed to obtain the latest status of the enquiry from the Chief Judicial Magistrate. The Chief Judicial Magistrate then sent the enquiry report, which was placed on record as noticed in order dated 17.1.2007. After perusing the enquiry report submitted by the Chief Judicial Magistrate, it was noticed that detenue Lachhmi was found illegally detained without registering any case against her. It was further noticed that no one had appeared before the Chief Judicial Magistrate on behalf of the police officers, namely, Baldev Singh SHO and Kashmira Singh SI. This court, accordingly, served notice to them before taking any further action on this report. They were directed to be served through Senior Superintendent of Police, Amritsar. The counsel appearing for them on 3.5.2007 sought time to file reply and argue the matter. Both the officers have now filed reply.

I have heard the learned counsel for the parties.

It is seen that Baldev Singh SHO and Kashmira Singh SI had initially filed replies to the writ petition on 5.2.2005 and 14.3.2005, respectively. The perusal of respective replies filed by the police officers would show that they have found fault with the petitioner in approaching this court not with clean hands and to hoodwink the process of law. Both the respondents has further stated to have given due respect to the Warrant Officer, who, according to them did not find detenue Lachhmi present in the police station.

Explaining the presence of detenue with Lady Constable Amarjit Kaur, respondent No.1 has stated that Lady Constable was going back to her house after paying obeisance at Gurdwara Shaheendan. When she found a young girl standing in front of the office of CIA Staff, Majitha, on humanitarian ground, Amarjit Kaur had asked the girl for the purpose or reason for which she was standing there. During this time, Warrant Officer stated to have reached the place. It is accordingly denied that detenue Lachhmi was taken outside from the premises of the first floor by Lady Constable Amarjit Kaur on the excuse of taking her to the bath-room, as was the version of detenue Lachhmi. Similar stand has been taken by respondent No.2 to explain the presence of detenue with Amarjit Kaur in front of the premises of the CIA Staff. Both the respondents have now filed an additional affidavit in response to the findings of the enquiry held by the Chief Judicial Magistrate, Amritsar. It is stated that no notice of the enquiry was ever served to the respondents. It is further explained that notice/summon to respondent No.1 for appearing on 12.11.2005 sent by Chief Judicial Magistrate was received back with the report that he had been transferred and posted to Police Line, Daburji. The second summon was also received back with the report that respondent had been transferred to Police District Majitha. It is further contended that even if entire story, as projected, is accepted, it would only show that detenue was recovered from the CIA Staff, Majitha while in the company of Lady Constable Amarjit Kaur and this place has a separate entity having no concern with Police Station `B' Division. Similarly, respondent No.2 Kashmira Singh has also pleaded that he was not served by the Chief Judicial Magistrate. His

stand on merits is also identical to the one taken by respondent No.1 as has been noticed above.

Mr.P.K.Gupta, representing respondents No.1 and 2 would first say that the enquiry by Chief Judicial Magistrate has been concluded without effecting service on the respondents and hence they stand condemned un-heard. He would plead for sending the case back for further enquiry by Chief Judicial Magistrate so that they could project their version for proper adjudication of this fact finding enquiry.

This submission on the face of it may appear attractive. Except for baldly stated in the affidavit filed by the respondents that they had not been served, no material has been placed on record to show that the service was not effected on the respondents. It is specifically noticed by the Chief Judicial Magistrate in its report that the respondents had not turned up despite service of notice. If the respondents wanted to show that this report is not based on facts or is contrary to the factual position, they were bound to produce the relevant material in this regard once they were given chance to file response to the fact finding enquiry report submitted by the Chief Judicial Magistrate. The assertion of the respondents cannot be accepted on the face of judicial record, which says that they both had not turned up despite receipt of notice. The respondents, in my view, have failed to substantiate their plea that notice or service had not been effected on them by the Chief Judicial Magistrate. They seem to be knowing too much about the date and service of notice and its receipt. In any case, their plea cannot be accepted, which is contrary to the judicial record in the form of an enquiry held by the Chief

Judicial Magistrate.

Still, to give proper opportunity to the respondents, they were given time to file response and accordingly had filed additional affidavits. They had also contested the contentions and the averments raised in the petition by filing reply in the form of affidavit in the year 2005. They have now projected their defence, which, they were likely to raise before the Chief Judicial Magistrate. It may also need a notice that basic facts do not appear to be in dispute. It is not being disputed by the respondents that detenue indeed was found present in the premises of CIA Staff located at the back side of the Police Station `B' Division, Amritsar by the Warrant Officer. It is also not being disputed by the respondents that they had reached the scene at the time of this raid conducted by the Warrant Officer. However, the parties appear to be taking divergent stands in regard to the presence of the detenue. It is the case of the petitioner that detenue Lachhmi aged fourteen years was kept in illegal detention from 4.00 A.M. of 11.9.2004 till she was got released on 15.9.2004. On the other hand, the respondents have set up a plea that she was never arrested and was incidentally present outside the premises of CIA Staff, which is a separate entity from Police Station `B' Division and was found in the presence of Amarjit Kaur Lady Constable, who had stopped there to help the girl on humanitarian ground. The case of the petitioner is supported by the version given by Harbhajan Kaur petitioner and detenue Lachhmi examined as Witness 1 and Witness 2, which is not rebutted by any evidence or material on record mainly on account of non-appearance of the respondents. The defence which the respondents have projected is the one which they were

bound to raise before the Chief Judicial Magistrate as well. It seems to be a mainly two folds in its nature. As per the respondents, detenue Lachhmi, even if is accepted to be giving truthful account would only show that she was recovered from a place in front of the premises of CIA Staff, which had got no concern with Police Station `B' Division, Amritsar. Plea further appears to be that she was not arrested at all and as such allegation of illegal detention cannot be made out.

The plea raised by the respondents cannot stand the test of judicial scrutiny. CIA Staff, Majitha would have no cause to arrest or detain Lachhmi. If Lachhmi was detained by CIA Staff, she cannot be expected to make allegation against the respondents for having raided the house at 4.00 A.M. on the morning of 11.9.2004 and her detention. The reason given by the detenue and the petitioner is that the police had arrested Baldev Singh, brother of the detenue, and were pressurising her father Dalip Singh to surrender and in this connection she was taken to the police station without registering any case against her. It may be significant to notice that Baldev Singh, brother of the detenue, was concededly in the custody of Police Station `B' Division on a police remand and the allegation, if any, in regard to illegal detention of the detenue would be against Police Station `B' Division as CIA Staff, Majitha would not have any concern with the case either against the brother of the detenue or her father. Reason, if any, for detaining the detenue, would be with the officials of Police Station `B' Division and not with the CIA Staff, Majitha. The explanation offered to show the presence of detenue being innocent in the company of Lady Constable Lachhmi is clearly un-acceptable.

It is too much of a co-incident that Amarjit Kaur happened to be present in the premises of CIA Staff upon her return from Gurdwara Shaheedan at such late hour at night. This seems to be a story inverted to explain the presence of the detenue inside the vicinity of Police Station `B' Division. The insensitivity of the police officials in showing no regard to liberty of a young girl aged fourteen years is clearly seen and noticed. The police officials, one of them is stated to be at the fag-end of his career, can certainly be expected to be considerate towards a young girl child of this tender age. Why would such a young child manipulate all these things against the respondents, if indeed it is not a fact?. Such moves to twist facts and invent story can more appropriately be attributed to the police, rather than a child of fourteen years of age. If any intention is to be attributed to the detenue to show her presence in the police station at the time of raid, she could not be expected to be present in the premises of CIA Staff, which is located at the back of the police station. She could have very well been present in front of or inside the Police Station `B' Division, Amritsar. The plausible and probable explanation of her presence at the back of police station in the premises of CIA Staff would rather indicate that she had been illegally detained and kept at a place away from the police station to avoid being detected. Effort appears to have been made at the time of raid to take her out from the CIA Staff where she was illegally detained. As noticed above, the reason and purpose for detaining the detenue would be on the part of Police Station `B' Division. The presence of the detenue, as such, is clearly attributed to the conduct of the respondents, that is even the allegations made by the

petitioner and the detenue have gone un-answered and un-challenged. In this view of the matter, I am inclined to accept the finding returned by the Chief Judicial Magistrate, Amritsar. The action of the respondents in seeking time on the ground that they were not served is only aimed at delaying the inevitable and as such is to be rejected.

Finding that the detenue was kept in illegal detention from 4.00 A.M. of 11.9.2004 to late evening of 15.9.2004, it is to be seen as to what should be the consequence of this action of the respondents. The respondents have not only detained the detenue illegally, but have attempted to mislead the court and the judicial process in raising misleading pleas. Both the respondents are clearly responsible for this illegal detention. They even came present during the raid by the Warrant Officer and slipped away when actually facts started surfacing. Their conduct in illegally detaining a young girl of fourteen years cannot be condoned.

Since the detenue has been released and no further action has followed thereon, I am not inclined to direct registration of a case against the respondents or to direct their prosecution for keeping the detenue in illegal custody. They, however, must compensate the detenue for keeping her in illegal custody, which must have left some scars on this young mind. Taking into account the various aspects of the case, I find that the ends of justice will be met in case respondents are directed to pay a compensation of Rs.10,000/- each to the detenue. The respondents would pay this compensation within a period of fifteen days from the receipt of copy of this order. Senior Superintendent of Police, Amritsar is directed to

ensure the payment of the amount of compensation by the respondents and to ensure its payment to the detenue within the time stipulated. The Senior Superintendent of Police will intimate this court once the order is complied with.

The present writ petition is disposed of accordingly.

October 04, 2007 (RANJIT SINGH)
ramesh JUDGE